

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION



June 1, 2004

Williamson County, Illinois and Regional Economic Development :
Corporation, a Not-for-profit corporation :
Petitioners :

Vs. :

The Burlington Northern and Santa Fe Railway Company and Illinois :
Department of Transportation :
Respondents :

T04-0025

Petition seeking an Order of the Commission to close a railroad grade :
crossing in Williamson County, Illinois, and to open and establish a new :
public grade crossing in Williamson County over a line of railroad of The :
Burlington Northern and Santa Fe Railway Company. :

TO ALL PARTIES OF RECORD:

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

Attached is a copy of the Administrative Law Judge's Proposed Order in the
above referenced matter.

The Administrative Law Judge's Proposed Order is being sent to you pursuant to
the Commission's Rules of Practice (83 Ill. Adm. Code 200). Your case is a "contested
case" or "licensing case" as defined in Section 200.40 of the Rules and, therefore, the
Hearing examiner is required under Section 200.820 to issue a Proposed Order to all
parties.

Under Section 200.830 of the Rules, exceptions to the Proposed Order and
replies thereto may be filed by the parties within the time periods established by the
rules of such other times as fixed by the hearing examiner. The times for filing
exceptions and replies are fixed at ten days and five days, respectively.

Entered:

A handwritten signature in black ink, appearing to read "Rick Korte".

Rick Korte
Chief Administrative Law Judge
Review & Examination Program

RK:rsc
Staff:Humphries

DOCKETED

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Williamson County, Illinois and Regional Economic Development
Corporation, a Not-for-profit corporation
Petitioners

Vs.

The Burlington Northern and Santa Fe Railway Company and
Illinois Department of Transportation
Respondents

T04-0025

Petition seeking an Order of the Commission to close a railroad
grade crossing in Williamson County, Illinois, and to open and
establish a new public grade crossing in Williamson County over
a line of railroad of The Burlington Northern and Santa Fe
Railway Company.

PROPOSED ORDER

By the Commission:

On March 15, 2004, Williamson County, ("County") and Regional Economic Development Corporation ("REDCO") filed with the Illinois Commerce Commission ("Commission") a verified petition in the above captioned matter naming as respondents The Burlington Northern and Santa Fe Railway Company ("Company") and Illinois Department of Transportation ("Department") seeking an Order from the Commission authorizing the permanent closure and removal of Township Road 253-A (TR-253) grade crossing of The Burlington Northern and Santa Fe Railway Company's tracks (**AAR/DOT 068 973S, Milepost 177.73**), and the construction of a New at grade crossing at milepost 177.83, .1 mile away. The County's petition proposes that the cost of the project be born by the Petitioners.

On May 20, 2004, a hearing was held before a duly authorized Administrative Law Judge at the Commission's Springfield Office. An appearance was entered by representatives of the County, REDCO, the Company, the Department and a member of the Commission's Railroad Section ("Staff").

The County and REDCO offered evidence and testimony in support of the petition filed herein. REDCO stated that it was in the process of developing an industrial park in and near Marion, Williamson County. There are two industries located in the park and they tentatively plan on expanding and two other industries are looking at the area for locating in the park. Presently there are approximately 600 employees and 90-100 trucks enter and leave the area. The County is in the process of designing an east west roadway (31'-2" back to back of curb), identified as REDCO Road,

between the industrial complex on the west and existing roads to the east. Preliminary plans have been prepared and final plans should be available within thirty (30) days. The County will operate and maintain the roadway upon opening to traffic. Township Road 235-A is an east/west roadway intersecting the Railroad at an approximate 90° angle and carries 50 vehicles per day. The crossing is equipped with reflectorized crossbuck warning signs. The roadway is impassable except to all terrain vehicles. The roadway serves no useful purpose.

The Railroad stated it operates single main tracks through Marion County, generally in a northeast to southwest direction. Train operations consist of nine (9) freight trains at a max timetable speed of 49 mph during a twenty-four (24) hour time frame. These trains run during daylight and dark hours.

The Railroad indicated it had estimated the cost of installing a 40' concrete crossing at \$44,658, and the installation of Automatic Flashing Light signals and Gates controlled by constant warning time circuitry at \$ 135,411. No barricades would be required to officially close TR-235-A since the roadway would be removed on both sides of the closed roadway. The County indicated it had vacated the highway right-of-way. The Railroad further indicated it would remove the crossing surface and warning signs at its cost. The County and Company are in the process of writing an agreement for the construction of the crossing and future maintenance responsibilities of the parties. The County and REDCO are in the final stages of securing funding for the project from the Department and the Ill. Economic Development Funding

As required by Law, public notice of the hearing on the subject case was published in The Marion Daily Republican, a newspaper of general circulation, on April 1, 2004.

The County and REDCO therefore requests that the Commission enter an Order closing and abolishing Township Road 235-A, and authorizing the establishment of a new at-grade crossing at Company milepost 177.83, .1 mile south of the existing crossing. All cost to be borne by the County and/or REDCO. The Parties request eighteen months to complete the project.

An Administrative Law Judge's Proposed Order was served on the parties. Any Exceptions and/or Replies filed thereto have been considered herein.

The Commission, having given due consideration to the entire record herein, finds that:

- 1) The Commission has jurisdiction of the parties hereto and the subject matter herein.
- 2) The recitals of fact set forth in the prefatory portion of this Order are supported by evidence of record and are adopted as findings of fact.

- 3) Public safety requires that the work proposed in the petition and set forth in the prefatory portion of this Order be completed as outlined in Petitioner's Exhibits 1-4 (map and highway plan), which were admitted into evidence.
- 4) The County and/or REDCO should notify the parties in writing within ten (10) days of securing the required funding for the project.
- 5) Public convenience and necessity do not require the continued existence of the Township Road 235-A crossing and said crossing should be closed, abolished and the existing crossing surface and cross buck signs should be removed.
- 6) In the interest of public safety and convenience, a new at-grade crossing at Company milepost 177.83, .1 mile south of the existing crossing is fair and reasonable and the petition should be granted.
- 7) It is fair and reasonable that the costs for the improvements set forth herein should be borne 100% by the County and/or REDCO;
- 8) The County has agreed to be the lead agency for the construction of the new roadway. The County will be responsible for the roadway work, provide construction supervision, and perform all future maintenance.
- 9) The County and Railroad shall each file a written report with the Director of Processing within fifteen (15) days of the conclusion of each calendar quarter, stating the status of expenditures of their portions of the project and their percentage of completion of the project. If the project is behind schedule the report must include a brief explanation of the reason(s) for the delay.
- 10) The County and Railroad shall each within ninety (90) days of the date of this Commission Order; submit to the Director of Processing, Transportation Division of the Commission, the name, title, mailing address, phone number and facsimile number of a project manager.
- 11) Since the County and/or its contractor will perform the roadway construction, roadway contractor and railroad liability insurance will be required as specified in Department's "Standards and Specifications for Road and Bridge Construction".
- 12) The County and Railroad shall have bi-monthly coordination meetings, unless agreed to by each of them that any meeting is not necessary, until the completion of the projects.
- 13) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate

offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that The Burlington Northern and Santa Fe Railway Company be and it is hereby required and directed to close, abolish and remove the crossing surface and crossbucks at the Township Road 235-A grade crossing.

IT IS FURTHER ORDERED that Williamson County and/or REDCO be, and they are hereby required and directed to close, abolish Township Road 235-A crossing and the existing crossing surface and cross buck signs should be removed.

IT IS FURTHER ORDERED that Williamson County and/or REDCO be, and they are hereby required and directed to notify the parties within ten(10) days of securing the required funding for the project. If the County and/or REDCO have not notified the parties within six (6) months of the date of this Order, this order shall be vacated and rendered null and void.

IT IS FURTHER ORDERED that Williamson County and/or REDCO be, and it is hereby authorized to construct, establish and thereafter maintain a new at-grade crossing. 1 mile south of the existing crossing. Said roadway known as REDCO Road.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be and it is hereby required and directed to install a forty foot (40') concrete crossing surface and automatic flashing light signals and gates controlled by constant warning time circuitry and to thereafter maintain same.

IT IS FURTHER ORDERED that Williamson County be, and it is hereby required and directed to maintain the new roadway that will be constructed to connect

IT IS FURTHER ORDERED that Williamson County and The Burlington Northern and Santa Fe Railway Company be, and they are each hereby, required and directed to proceed immediately in performing its work as set forth in the prefatory portion of this Order, and shall complete its work within eighteen months (18) from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be borne 100% by Williamson County and/or REDCO.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit within one hundred twenty (120) days of its receipt of the Order, detailed cost estimates and a general layout plan to the Illinois Department of Transportation.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of a detailed cost estimate and general layout plan,

furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed in accordance with Form 3 of 92 Illinois Administrative Code 1535.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 of this Commission, one for each location, showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that Williamson County and The Burlington Northern and Santa Fe Railway Company shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress each has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the County and/or Railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a National Inventory Update Report Form as a notice of said completion.

IT IS FURTHER ORDERED that Williamson County shall submit a written notice, to the Director of Processing, Transportation Bureau of the Commission, of the date the work herein required of it has been completed; said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that Williamson County and The Burlington Northern and Santa Fe Railway Company shall each at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project and percentage of completion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that, any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that, any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of

Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this day of , 2004.

Chairman